

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-593, In the Matter of Joseph Goulart, Jr. and Marcia Goulart, the court on October 26, 2007, issued the following order:

The petitioner, Joseph Goulart, Jr., appeals an order of the superior court upholding a provision of the parties' permanent stipulation, as it was incorporated into their divorce. We vacate and remand.

On appeal, the petitioner contends that the trial court erred when it issued the order without first receiving the deposition testimony of his former attorney. He further argues the trial court should have reformed the permanent stipulation due to mutual mistake.

The record supports the following. The parties were divorced on November 2, 2005. As a part of their divorce decree, the superior court approved the parties' negotiated permanent stipulation, which included a provision allocating responsibility for the marital home. The respondent, Marcia Goulart, moved to enforce this provision on January 13, 2006. The petitioner responded with a motion to modify the provision to reflect the true nature of the parties' agreement.

A hearing was held on May 30, 2006, at which the petitioner contended that the permanent stipulation did not accurately reflect the parties' actual agreement due to mutual mistake, and attempted to offer the affidavit of his former attorney. The respondent objected because she had not had an opportunity to cross-examine the former attorney. The trial court marked the affidavit for identification and ordered the record remain open pending a deposition of the attorney.

On July 7, 2006, before the deposition was submitted to the court, the court issued its order. The court determined that the relevant provision of the parties' agreement was unambiguous and thus the language of the stipulation was sufficient to determine the parties' obligations. The trial court made no finding with respect to the mutual mistake argument.

Here, the trial court agreed to keep the record open for submission of the deposition of the petitioner's former attorney but failed to do so. Therefore we remand for the trial court to consider this deposition. Also, upon remand, the

trial court shall make findings of fact and rulings of law in support of its decision on the issue of mutual mistake.

Vacated and remanded.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox,
Clerk**